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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Mexico

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his visit to Mexico from 2 to 12 May 2017, which is submitted in compliance with Council resolution 33/10.

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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Mexico*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. The Special Rapporteur on the human rights to safe drinking water and sanitation undertook an official visit to Mexico at the invitation of the Government from 2 to 12 May 2017. The main objectives of his visit were to review the access to water and sanitation services in Mexico, to identify the main obstacles hindering the full realization of those rights and to provide recommendations for tackling those obstacles and for ensuring the full enjoyment of those human rights by everyone in society.

2. The Special Rapporteur thanks the Government of Mexico for the invitation and organization of his visit, and for the open and constructive dialogues that took place. He is grateful to the federal, state and local authorities who met with him and provided information. He met with numerous civil society organizations, community representatives and people living in urban and rural areas, and particularly thanks the civil society organizations that helped to organize essential elements of the visit and the field presence of the Office of the United Nations High Commissioner for Humans Rights for its invaluable support. The Special Rapporteur also thanks residents who told him about the challenges that they face in accessing water and sanitation services and invited him into their homes.

3. During his mission, the Special Rapporteur met with government officials from the Ministries of Foreign Affairs, the Interior, the Environment and Natural Resources, the Economy, Finance and Public Credit, Health, and Public Education, as well as local authorities in San José del Rincón, Mexico State, and in Chiapas State. He also met representatives from the Senate, the Chamber of Deputies, the Supreme Court of Justice, the National Human Rights Commission, the Human Rights Commission of Mexico City, the National Commission for the Development of Indigenous Peoples, the National Water Commission, the National Institute for Women, the Federal Consumer Protection Agency, the Federal Commission for Protection Against Sanitation Risks, the Federal Office for Legal Protection of the Environment, the Mexican Institute of Water Technology and the Mexico City water service provider (Sistema de Aguas de la Ciudad de México). The Special Rapporteur visited Iztapalapa (Santa María Aztahuacan and Lomas de San Lorenzo) and Xochimilco (San José Obrero) in Mexico City; Papantla (Emiliano Zapata) and Filomeno Mata in the Veracruz State; and Tuxtla Gutiérrez and San Cristóbal de las Casas in Chiapas State.

4. Mexico faces numerous challenges to ensuring the human rights to safe drinking water and sanitation to all its people, many of whom live in peripheral urban areas and highly dispersed rural communities throughout the country. Many live in regions of high or very high water stress, experience low levels of development, face different socio-environmental conflicts and significant levels of poverty, requiring specific approaches for service provision. Adding to those challenges in recent years has been an economic environment in which government revenues have sharply diminished, in large part due to falling oil prices. Federal budgets for essential services have been significantly reduced, reportedly by over 37 per cent from 2016 to 2017 for the water and sanitation sector. Such cuts will have a potentially dramatic effect on the progressive realization of the human rights to water and sanitation in the short, medium and longer term. That negative impact could be aggravated by the institutional situation of the sector, which was described by one expert as being "on life support" due to its current political, financial and budgetary conditions.

5. The Special Rapporteur recalls that the primary obligation for the realization of all human rights, including the rights to safe drinking water and sanitation, lies with the Government of Mexico, which is expected to use the maximum available resources to meet that end. Representatives of the Government mentioned that the country recognizes the interdependency and indivisibility of all human rights with no order of priority of some human rights over others. However, the Special Rapporteur was concerned to hear from different authorities that the rights to drinking water and sanitation are not among the highest priorities of the Government in the context of its human rights obligations. Civil and political rights issues, including addressing allegations of torture and forced

disappearances, were noted as high priorities of concern to Mexico. While that is vital, he encourages the Government, as required under international human rights law, to give equal and appropriate attention and to provide necessary resources to address critical economic, social and cultural rights, including the human rights to water and sanitation.

6. As States are required to put in place national plans and targets to achieve goals under the 2030 Agenda for Sustainable Development, a key message of that process has been to "leave no one behind". Mexico must ensure as the highest priority that no individuals, families or communities are left without adequate water and sanitation services. To meet its human rights obligations, it is important to highlight that working gradually to realize the human rights to water and to sanitation would in turn help Mexico to achieve the Sustainable Development Goals, particularly, but not exclusively, Goal 6.

II. Legal, institutional and policy frameworks

A. Legal framework

7. Mexico has ratified most of the core international human rights treaties relevant to the human rights to water and sanitation, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, which stipulates the right to an adequate standard of living, including the human rights to water and sanitation. Those rights are explicitly recognized in several resolutions, particularly General Assembly resolutions 64/292 and 70/169, and Human Rights Council resolution 33/10.

8. Article 4 (6) of the Constitution, amended in 2012, explicitly guarantees the rights of all individuals to have access to sufficient, safe, acceptable and affordable water and sanitation services. While the Special Rapporteur commends Mexico for that development, he notes that the Constitutional amendment required the adoption of specific legislation on the subject to be enacted within 360 days. More than five years later, it is regrettable that no such law has yet been adopted and progress on passing a law has stalled. The existing National Water Law of 1992 remains in operation, but does not fully reflect the human rights framework and the Constitutional amendments. The Government should move forward in close consultation and collaboration with all key stakeholders, especially civil society groups, to pass new legislation that is in accordance with the Constitutional provisions. The legislation must assign priority to the interests of citizens, guarantee the normative content of the human rights to water and sanitation and human rights principles, clearly recognize that water for human consumption is a priority among water uses and enable conditions in which those human rights can be put into practice.

9. The Special Rapporteur emphasizes that a revised general law on water and other appropriate legislative provisions would be an important step in ensuring the rights to water and sanitation in practice, creating the legislative environment for concrete policies and programmes to be formulated and implemented and allowing individuals and communities to claim their rights under domestic law. A new law would also be instrumental in helping to ensure an improved and strengthened institutional framework and operational environment with clearly defined roles and responsibilities that better meet the increasing needs of the country. A strong legal framework must be accompanied by an efficient national water and sanitation policy, and comprehensive and participatory planning that leads to a concrete implementation strategy and measures. The Special Rapporteur takes note of several draft laws currently under consideration by the legislative power, but he is concerned that there are very divergent views on the issue in Mexican society and that previous attempts to reach a consensus have been unsuccessful.

B. Institutional framework

10. Under the Constitution (art. 115) and based on a project to decentralize service provision, municipalities are in charge of drinking water, sanitation, drainage, treatment and disposal of wastewater, as well as operating and maintaining infrastructure. Under the

three-tier system of federal, state and municipal government, some states have state water commissions, their own water laws and water governance frameworks, as well as state entities for water and sanitation service provision and regulation. The ultimate responsibility for the provision of water and sanitation falls to municipalities, which can be supported and partially funded by the state and federal governments. Several communities have self-managed water and sanitation services ("sistemas comunitarios de agua"). Numerous civil society organizations and some national authorities expressed concerns about the capacity of some municipal authorities to fulfil their mandate as service providers in the water and sanitation sector and the need to strengthen those services.

11. The National Water Commission (CONAGUA) is a decentralized body of the Ministry of the Environment and Natural Resources. It is a key organization in Mexican water management with an extensive range of responsibilities and functions, including ensuring the security and sustainability of the country's water resources, managing water rights and developing hydrologic infrastructure. The National Water Law defines the role of the National Water Commission in the water and sanitation sector as strengthening and supporting public services for urban and rural water, sewerage and wastewater treatment in the national territory, in coordination with state governments and, through them, with municipalities. While recognizing its important role, including in devising and implementing water policy, various stakeholders are calling for a review of the mandate of the National Water Commission to bring it into line with the Constitution and revised legislation, under which it should support state and municipal authorities in implementing in practice the human rights to water and sanitation.

12. Numerous stakeholders informed the Special Rapporteur that in practice the organization of the water and sanitation sector in Mexico was not functioning effectively to deliver high quality services to the population, due largely to insufficient federal and state support and funding to municipal authorities, as well as fragile and ineffective structures at the municipal level. As an example, the point was highlighted that costly federal and state-funded infrastructure projects, usually conceived in a top-down manner, did not have the required technical and financial support at the municipal level and quickly ceased to function effectively. Necessary resources, technical capacity and monitoring and control of service provision are not among the highest priorities at the three levels of government, yet are essential to ensuring the delivery of the best possible water and sanitation services to all, including the poorest and those in dispersed rural communities.

13. The Special Rapporteur considers that the organization of the water and sanitation sector shows an absence of coordinated efforts and roles between the three levels of government. The federal and state levels do have some responsibilities in setting standards, creating specific legislation and supporting service provision. However, they do not clearly complement or regulate the municipal level in its responsibility to provide water and sanitation services. At the municipal level, it was noted by some authorities that political factors contribute to poor service delivery. Political appointments of individuals are frequently made, giving senior roles in municipal water and sanitation providers to those without the necessary technical qualifications. Furthermore, municipal administrations are elected for three-year terms, resulting in frequent changes of administration and senior officials, which some blamed for inconsistent and poorly implemented policies, projects and programmes. The disconnect between the three levels of government hinders Mexico from achieving the highest attainable levels of services and complying with its obligations to realize the human rights to safe drinking water and sanitation.

14. It is also a matter of concern that, to date, Mexico has no formal regulatory bodies for either private or public providers of water and sanitation services. Comprehensive application of regulatory measures, at the federal, state or municipal level, is key to ensuring an accountable water and sanitation sector. Moreover, such measures are central to supervising and supporting municipalities in fulfilling their responsibilities. Regulatory bodies should be established and should be competent to ensure that those who provide water and sanitation services, whether public, private or others, comply fully with human rights and meet legal obligations and standards.

C. Policy framework

15. A number of strategic national plans relating to human rights, development and the rights to water and sanitation have been drawn up.[1] A prominent national plan in the water and sanitation sector is the National Programme for Water Management 2014-2018, which recognizes the human right to water and includes the objective of strengthening access to drinking water and sanitation services. The needs of rural populations are recognized and the Plan outlines the requirement to guarantee their access to water and sanitation, including through the use of alternative systems. Strategies to attain those goals combine increasing coverage of services, improving efficiency, and coordinating with other relevant programmes and institutions. The Special Rapporteur notes that the right to sanitation is not included with sufficient clarity in the Plan and calls for greater clarity in that regard.

III. Human rights to water and sanitation

A. Availability and accessibility

16. Government officials informed the Special Rapporteur that 94 per cent of the population of Mexico has drinking water coverage, while for sanitaion provision the figure is 93 per cent. Those levels of coverage show that service providers are capable of effectively promoting implementation of the rights to water and sanitation. Nevertheless, it is essential to highlight that those figures, while impressive, reflect only the existence of some form of infrastructure coverage, not the actual extent of access to water and sanitation in people's homes, which is dramatically lower.

1. Water

17. There remain significant sectors of the population in Mexico for whom the provision of safe water is extremely limited or non-existent. While demand is growing, it is estimated that by 2030 in some of the country's hydrological-administrative regions, the per capita renewable water resources will reach levels close to or lower than 1,000 m^3 per inhabitant per year, a condition classified as water scarcity.[2] The central, northern and north-western areas have experienced high degrees of water stress. Federal authorities noted that drought conditions affect large parts of those regions, with 16 states affected by drought. Moreover, 8 of the country's 13 river basins experienced high or very high water stress levels in 2015. The lack of continuous and sufficient access to water is also related to overexploitation of aquifers[3] for reasons including the need to supply water-intensive residential, industrial, agribusiness, touristic, extractive and developmental projects. Civil society organizations noted that that is detrimental to the continuous personal and domestic water supply.

18. Even within Mexico City, the picture of water availability is highly varied, with continuous and reliable water provision unavailable to the majority of the population. The aquifer supplying the city is the most overexploited in the country. That situation is replicated in other parts of the country, with some regions experiencing severe water shortages. For example, in Filomeno Mata in Veracruz State, it is disturbing that the availability of safe drinking water is critical and in need of urgent intervention for the urban community of over 13,000 inhabitants. While piped water and sanitation infrastructure is in place, households receive drinking water for only three hours per month on a rotational basis under a failing water system. Community members stated that sometimes they do not receive piped water for three months. The community is almost entirely reliant on natural

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[1] Such as the National Development Plan 2013-2018 and the National Human Rights Programme 2014-2018.

[2] Mexico, National Water Commission, *Statistics on Water in Mexico, 2016 edition* (Mexico City, Ministry of the Environment and Natural Resources, 2016), p. 182. Available at http://201.116.60.25/publicaciones/EAM_i_2016.pdf.

[3] Of the 653 aquifers, 106 are overexploited. See www.aguas.org.mx/sitio/index.php/panorama-del-agua/diagnosticos-del-agua.

springs, which require them to constantly fill containers for all their water needs. In dry seasons, springs may dry up or community members have to "wait for hours to fill a bucket".

19. In dispersed rural communities, the challenges relating to the availability of safe drinking water and sanitation are often acute. Despite projects to install simplified technology in such communities to pump and purify water and to collect rainwater, for example, there is a minimum requirement of maintenance and service that is not always available, while rainwater harvesting relies on seasonal rainfall. That has left some communities, including the indigenous communities in Chiapas and Mexico State that the Special Rapporteur visited, with severe water availability problems and reliant on potentially hazardous groundwater sources. In some localities a decree of prohibition ("decreto de veda") impedes aquifer exploitation in certain zones where aquifers are depleted and require recharging to supply larger communities. That restricts the drilling of wells in some adjacent rural areas and may be creating inequalities in access to water sources. Besides, the excessive number of concessions that have been approved without previously updating the information on water availability is a serious problem that remains unaddressed.

20. A high proportion of the water systems in the country are operated on a rotational basis under which households receive piped water only on specific and often unpredictable days or at certain times. For users, that means that they need to store water for a long period, which leads to deterioration of the water quality and affects human health. Some regions continue to receive limited or no water and sanitation services. In the face of national budget reductions, the Special Rapporteur expresses concern about the possibility of complacency with regard to service provision, based on official coverage figures that are misleading and may detract from or delay the implementation of essential measures to improve services and access to safe water and sanitation. That is a serious concern, and the Special Rapporteur cautioned that the supposed good performance should not be used as justification for the large reduction in the 2017 budget for water and sanitation.

21. Even in Mexico City, access to water is sporadic and unpredictable. According to the Human Rights Commission of Mexico City, 70 per cent of the population receive water for less than 12 hours per day. The Special Rapporteur visited the communities of Santa María Aztahuacan and Lomas de San Lorenzo in the Iztapalapa borough of Mexico City. The area is the city's most populous, historically an area of high and uncontrolled population growth, and has a high level of socioeconomic marginalization. Despite being connected to the piped water system and having several wells in the area, civil society groups reported that hundreds of thousands of people in the area do not have regular access to water or have very limited and rotating access with no service on some days. There is a widespread view expressed by the community that vast amounts of water under the area are diverted by the authorities to supply other, high usage residential and commercial areas, as well as for megaprojects, including the development of a new airport.

22. Residents of those communities in Iztapalapa expressed fears that an additional well would be drilled to take even more water from the area and said that the authorities had failed to inform or adequately consult with them and had played down their problems, including concerns about cracks in housing due to subsidence. Residents expressed frustration over paying for a poor water service and inadequate sewerage system. One asked where their water was going, given that there were wells in their neighbourhood, but they did not get any water from them. Another complained that a budget for new water pipelines to the neighbourhoods had not been approved, while commercial and development projects had been authorized. Community members raised concerns about the quality of water provision from all the sources they use, including tankers, noting that they do not trust the water and that it contains visible solids, has a foul smell and a dark colour. The Special Rapporteur reminds the Government that the human rights to water and sanitation require that the domestic needs of all individuals, families and communities must be the first consideration and highest priority among the various water uses, as also explicitly required under the National Water Law (art. 22).

23. The Special Rapporteur visited some informal settlements, including the community of San José Obrero in Xochimilco, Mexico City, where residents have to pay unaffordable

prices to transport water by donkey to their hillside homes and to buy bottled water, as they are considered ineligible for full access to water on the basis of the community's lack of legal status. The Special Rapporteur was informed by the authorities that it was difficult to provide water to communities living on hillsides where the elevation creates technical problems. However, civil society demonstrated that wealthy communities in other parts of the city, also living in high elevation areas, experienced few problems with access to piped water and high levels of service provision, showing that inequalities in water supply in the city are linked to wealth, and not to technical concerns. City officials argued that providing water and sanitation services to such locations and populations would legitimize illegal settlement or occupation of lands.

24. Equally, in Tuxtla Gutiérrez, in Chiapas State, the residential community of Real del Bosque has not been granted full legal status, which has serious implications in terms of access to water for over 8,000 households. An unregulated informal service provider operates the services and the community reported serious complaints to the Special Rapporteur about access to water, the quality of the services, their price and systematic and indiscriminate disconnections. The Special Rapporteur recalls that the human rights to water and sanitation must be respected, protected and fulfilled for all in society, irrespective of their social and economic conditions and their housing situation. Efforts should be made to formalize informal settlements and extend water and sanitation services to such locations.

2. Sanitation

25. The national provision of sanitation services, particularly for urban and rural areas not connected to sewerage systems, is a cause for concern and must not be neglected. The human right to sanitation does not necessarily require collective solutions, but establishes governments' obligations to support individual solutions to meet the proper sanitary, health and environmental requirements. In some localities visited, the sanitation system was extremely basic or non-existent, poorly functioning or had ceased to function entirely with consequences including untreated wastewater discharged directly into local streams and rivers that are water sources for communities downstream. In Filomeno Mata, San José del Rincón and Tuxtla Gutiérrez, the Special Rapporteur witnessed expensive wastewater treatment plants that are not operational due to lack of maintenance, collapsed sewerage lines and insufficient funds.

26. While the sanitation sector benefited from exceptionally high investment in 2012 (17.6 billion pesos), it has since received decreasing funds (5.6 billion pesos in 2015) and state and municipal authorities and civil society expressed concerns regarding the potential for further erosion of services or failure to expand or maintain essential sanitation infrastructure. The Special Rapporteur visited San Cristóbal de las Casas, which has over 200,000 inhabitants, and witnessed a large flow of untreated wastewater flowing downstream, inevitably contaminating water sources and resulting in serious health problems.

3. Public institutions

27. The Special Rapporteur was particularly concerned to learn that many schools in Mexico lack adequate drinking water and sanitation facilities. Mexico has 206,155 public schools, of which 42,617 obtain water from either a water well or a tanker truck, and 6,489 schools lack access to water. The quality of water when available is not guaranteed. For instance, the Special Rapporteur met protesters outside one public school in Real del Bosque who complained about the lack of water provision to the school, which was reportedly available only once every 12 days, requiring the parents' association to pay several thousand pesos per month for water tankers, thus diminishing the resources available for other school needs or activities. Despite the costs they incur, they complained that there are no water fountains, toilet facilities are inadequate and school meals are prepared with contaminated water. In many schools, toilets do not function properly due to the lack of water to flush away waste. In Mexico City, over 120 preschool, primary and secondary public schools have to obtain water from sources other than the public water network.

28. In May 2014, the Government approved an initiative to bring drinking water, via water fountains, to all public schools. While that is a very welcome development, progress in implementation has reportedly been slow and should be stepped up, particularly in states with the highest levels of poverty and marginalization. Challenges were identified, including the need to connect schools to municipal networks where possible or, for those schools in more remote locations or where no water system is available, to identify and establish alternative solutions, such as rainwater harvesting. The need to ensure technical maintenance at the local level was also identified as an ongoing challenge that would also benefit from the social participation of communities in monitoring the system and its operation. According to the Ministry of Public Education, the first phase of the project has been completed, with more than 6,000 water drinking systems installed out of a total target of 11,034 for 2016/17.

B. Quality

29. The Ministry of Health has overall responsibility for surveillance of the quality of drinking water and is required to set standards for drinking water quality, to which providers should conform, while state law may contain further obligations and requirements. The Federal Commission for Protection Against Sanitation Risks is a regulatory body and a decentralized organ of the Ministry of Health responsible for regulating a variety of health-related areas, including drinking water quality. The National Water Commission also has a role in ensuring the quality of water resources under the National Water Law and provides funds to states and municipalities to improve the quality and availability of water supply. It also has a monitoring role in collaboration with other state and municipal authorities to ensure compliance with federal quality standards, but that role is more focused on the quality of water sources, and not on drinking water.

30. The current standard for drinking water quality in Mexico (NOM-127-SSA1-1994) is very outdated. A revision of that standard in 2000 did not introduce any substantial changes to it. In 2011, the World Health Organization published the fourth edition of its guidelines on drinking water quality and numerous addenda and recommendations for specific contaminants. Those updated scientific developments resulted in a number of new parameters and more stringent standards for water quality. Considering those developments and the complex situation in Mexico with regard to diverse environmental impacts on its water sources, mainly due to industrial effluents, agriculture, mining and hydrocarbon projects, the current norm must be urgently updated to provide more adequate and health-oriented surveillance and monitoring of drinking water quality. The Special Rapporteur learned that a commission was established for that purpose and urges the Government to speed up the process of updating the norm, in a rigorous, open and participatory way.

31. Numerous community representatives and non-governmental organizations raised concerns relating to the quality of water supplied, while officials admitted that water quality varies greatly and it is frequently not suitable for drinking. They reported frustration over insufficient responses from authorities when they raised concerns or sought testing of water samples and assurances over water quality. The Special Rapporteur was informed that there is no quality surveillance of informal water providers by the Ministry of Health, which is a cause for concern in view of the prevalence of such providers in Mexico to supplement insufficient public services.

32. In several communities that the Special Rapporteur visited, inhabitants noted their reliance on bottled water for drinking due to concerns about quality, which adds a considerable extra financial burden for those who are often living in the poorest areas and with the lowest incomes. The fact that Mexico has the highest per capita consumption of bottled water in the world (480 litres per year) is an indication of the distrust of the Mexican population in water utilities. Dependence on bottled water is definitely not a way to meet the country's obligations relating to the right to water, as it undermines the necessary accessibility and affordability of water provision. Some concerns were also raised by community members regarding the quality of bottled water, with some calling for stricter regulation of the sector.

33. Mexico is also one of the largest consumers of soft drinks in the world. Academics and members of non-governmental organizations reported to the Special Rapporteur that that is also a result of the distrust regarding the quality of drinking water, including in schools, which has enabled soft drinks companies to exploit the situation and led to worryingly high levels of childhood obesity. In a positive step, in 2014, a soda tax was created, with the authorities undertaking to use revenues to support the implementation of drinking water fountains in public schools, a step that is also supported by the national General Act on Education Infrastructure. The Special Rapporteur encourages the Government to ensure continuous implementation of that programme.

34. The Special Rapporteur was informed about numerous cases relating to contamination and pollution of water sources due to factors such as mining and industrial projects, hydroelectric power and hydrocarbon extraction, including the use of fracking in some States such as Veracruz, Puebla, Coahuila, Nuevo León and Tamaulipas, as well as indiscriminate and uncontrolled use of pesticides. It was reported that, in numerous cases, those environmental issues directly or indirectly affected water sources, raising concerns about drinking water quality and health protection in affected areas, considering that various contaminants are not adequately removed by water treatment plants and that in some cases, water is directly consumed from the sources. For example, in locations where piped water offers only sporadic and unreliable supply, communities are heavily reliant on local rivers, springs, creeks and wells for their water consumption. Local communities in areas affected by contamination of water sources expressed their frustration that their complaints go unanswered, that they are not properly consulted prior to the project design and implementation and that their right to water seems to be a low priority for the relevant authorities and private bodies. One indigenous representative stated that "the sources from which we take our water are the same as those used by the hydrocarbon companies. We feel that the water is sick and we are becoming sick too, because the water is sick".

35. The Special Rapporteur heard reports that the poor quality of drinking water and lack of adequate sanitation and wastewater treatment was negatively affecting individuals' health. Residents frequently noted that their concerns were ignored and that there was a lack of accountability of service providers. Civil society called for strengthening of the monitoring and regulatory frameworks to rapidly address such issues and provide appropriate responses to concerned communities. There must be recognition of the impact of economic activities on water and the potential and actual harm caused to local people who may have no choice other than to use contaminated water sources. Prompt action to address that situation is necessary. It needs to be emphasized that public and private companies have the responsibility to respect the human rights to water and sanitation and to take due diligence measures to avoid and reduce any negative impact on those rights. Additionally, the Government's systematic monitoring of the level of specific contaminants in piped water is an urgent issue.

36. In remote indigenous communities in Chiapas (see para. 51 below), which are heavily reliant on local surface-water sources, some residents noted that they and their children had experienced health problems, including diarrhoea, vomiting and headaches, and were concerned that the water quality might be the cause. Without adequate piped and purified water provision, they rely on a lagoon where animals use the same source and defecate close to the water. Even in larger urban settings such as Real del Bosque in Tuxtla Gutiérrez, the Special Rapporteur was informed that the wastewater treatment plant was not functioning and that large quantities of wastewater flowed from the more than 8,000 households into local creeks near to homes. Residents complained that they suffered from increasing incidents of illness, dermatosis and eye infections, which they attributed to the exposure to wastewater, while their complaints received no positive response from the service provider or municipality.

37. The Special Rapporteur notes that a number of measures are necessary when applying the human rights lens to the issue of water quality. Strengthening the control of water quality by providers, combined with a more comprehensive surveillance of water quality, will ensure a more reliable picture of the risks associated with water consumption in each community and city. Additionally, the right to information must be ensured by authorities and water providers, giving systematic information to users on the quality of the

water they consume, irrespective of individual requests or complaints made. National guidance on that issue would be most welcome.

C. Affordability

38. Affordable services are essential to guaranteeing the rights to water and sanitation, especially for those living in poverty. From the total population of 121 million people in Mexico, some 53.3 million live in poverty, with 11.4 million living in extreme poverty. Tariffs for water and sanitation are usually set by each municipality, based on state legislation and local circumstances and therefore tariffs often differ substantially according to locality. A classification system based on socioeconomic status, through a vulnerability index, is used by some providers to establish their tariff systems and cross-subsidies.[6] In Mexico City, for example, the service provider uses a dynamic geostatistical model, the "development index", to calculate the development level of every city block based on social and economic indicators. Such systems potentially protect those living in the most vulnerable situations against unaffordable bills, if properly implemented.

39. In many of the communities the Special Rapporteur visited, residents expressed their concerns regarding high or unaffordable bills for poor services that do not meet their needs. Mexico has in place mechanisms to receive complaints in that regard, such as the Federal Consumer Protection Agency, but the actual number of cases relating to water prices is very limited. While the financial sustainability of the water and sanitation system is essential and relies on an appropriate system of water tariffs, it is nevertheless imperative to ensure that services are fully maintained to those with the lowest incomes or living in poverty. The Special Rapporteur ascertained that those who receive no service or poor service by their providers are those who experience the highest economic and social impact, since they are compelled to rely on expensive alternative or supplementary ways of accessing water, such as bottled water, water trucks and informal providers. That means that the poorest often pay more for their water and expend more time and energy obtaining it.

40. Some of those interviewed noted that a significant proportion of their disposable income is taken up by water bills and supplementary costs for bottled water or water from tankers required to meet family needs. In some of the localities he visited, the Special Rapporteur was informed that households that pay water rates for water from the public utility pay several times that amount more each month for bottled water or tanker delivery. Some people informed the Special Rapporteur that they had incurred considerable debts due to their inability to pay water rates. In some locations, additional costs were incurred to transport water from tankers or other water sources to their homes, for example in San José Oberos in Xochimilco, where residents pay to have water jugs delivered by donkey to their hillside homes. Residents in Iztapalapa complained that, in addition to water rates, they rely on water tankers to fill containers in their homes, reportedly costing residents 300–800 pesos each time, when the official minimum wage is 80.04 pesos per day. Some people complained about a lack of clarity on their water bills relating to rates and other fixed costs or charges.

41. The Special Rapporteur was informed that services have been cut in the case of failure to pay water bills. Although there are provisions in the Constitution and decisions of federal courts prohibiting that practice, there is no definitive legal safeguard impeding disconnection due to the lack of economic capacity to pay. The situation differs from state to state based on local laws. In Mexico City, the Special Rapporteur was informed that non-payment resulted in only a decrease in the volume supplied or in water pressure. In Tuxtla Gutiérrez, Chiapas, families reported that their services had been cut due to non-payment. Disconnection of service on the grounds of economic incapacity is a retrogressive measure and is a violation of the human rights to water and sanitation. The revised national legislation on water and sanitation services must include a provision clearly prohibiting the disconnection of users who are economically unable to pay their bills for those services.

[6] Usually, commercial and industrial users are charged with higher tariffs, subsidizing residential users.

42. In Tuxtla Gutiérrez, the Special Rapporteur met with community members of the residential borough of Real del Bosque, who complained about infrequent water supply, the poor quality of water, and services being cut off due to non-payment for many, even those struggling on low incomes and some people with chronic health conditions. One woman said that she had accumulated a large debt due to water bills and her service was cut off and her appeals to the service provider rejected, despite the fact that she is suffering from cancer. Residents called for accountability for service provision to be urgently addressed and for the municipal water provider (Sistema Municipal de Agua Potable y Alcantarillado) to take over the provision of services from a private body that had been created and that they considered to be overcharging and failing them. One resident stated that "people from water tank trucks tell us that they take water from our own wells to sell back to us". The provider explained that the problems stemmed from water shortages, which caused wells to dry out, and from a lack of government support and the politicization of the issue by some parties and complainants. Despite being one of the largest residential neighbourhoods in the city, the legal status of Real del Bosque has not been settled, due to fraud, and houses were sold without having the correct entitlements to services and utility supply, which is not acceptable under human rights law.

D. Sustainability

43. The Special Rapporteur encountered many cases of costly infrastructure projects for water provision, sewerage and wastewater treatment that had been implemented by the federal and state authorities, but had quickly ceased to function due to a lack of maintenance and skilled operation, as well as the high energy and maintenance costs required.

44. For example, he was alarmed to learn that out of 198 wastewater treatment plants in Chiapas State, only a very low proportion were functioning,[3] resulting in a major problem of contamination of water sources. In Ciudad Real, an expensive wastewater treatment plant that was installed has, according to the local authorities, functioned for one month only due to blockages and a lack of maintenance and capacity to repair the influent pipeline. These failures result in wastewater flowing directly from the town into the local river downstream, which is a source of water for other communities in the water basin. No adequate solution is in sight for the residents and the local authorities expressed their frustration, highlighting their lack of capacity to address the issue due to their lack of financial resources and technical capacity and poor support from the state and federal governments.

IV. Population groups requiring special attention

A. People living in dispersed rural areas

45. Providing safe water and sanitation solutions to highly dispersed rural communities presents specific challenges that are not being adequately addressed in practice in Mexico. In some locations, the Special Rapporteur witnessed small-scale community-managed water and sanitation systems, built through a national programme managed by the National Water Commission for implementing rainwater harvesting and "ecotechnologies" for rural communities. While they are positive practices, these systems should receive improved support and funds from different levels of governments to ensure their expansion and effective functioning in practice. Regrettably, the Special Rapporteur also witnessed examples of cases in which such systems are poorly supported and consequently they cease to function properly, leaving communities to return to potentially unsafe water sources and poor sanitation practices.

[3] Twelve (6 per cent) according to the Chiapas State authorities and 35 (18 per cent) according to the National Water Commission.

66. The Special Rapporteur visited water and sanitation projects in San José del Rincón, which provide an intervention model for dispersed rural communities, including small-scale pumping, filtration and treatment systems, rainwater harvesting and dry latrines. Beneficiaries are categorized as being partly or highly marginalized where water and sanitation provision has been highly problematic and where communities frequently rely on artisanal wells and defecate in the open, often close to water sources. In some communities, a water supply network exists but is not sufficient or not functioning. Some communities had stopped paying bills and were in debt. In one community the Special Rapporteur visited, 98 per cent of the residents had lost access to water.

67. One project also includes education and awareness-raising to improve local management of services, as well as awareness-raising about poor hygiene behaviour. Community committees are created to manage the water systems, in accordance with local cultural practices. Leaders noted that some community members still do not pay, for cultural and economic reasons. Part of the population had been excluded from the project due to budget constraints and those left behind were dubious about the criteria that had been used to select beneficiaries. Such pilot projects provide valuable and relatively inexpensive solutions and can constitute an important learning process. However concerns relating to universal access, level of services and especially sustainability need to be addressed by the federal Government and its state and municipal counterparts.

B. Indigenous peoples

68. A high percentage of indigenous people in Mexico are marginalized and live in poverty in highly dispersed rural communities. It was evident that indigenous peoples also frequently face some of the most severe challenges relating to the provision of water and sanitation. They have unique cultures, customs, practices and leadership structures, including with regard to their relationship with water and waste, which must be considered and respected in policies, programmes and service provision. In some cases, the Special Rapporteur was informed that solutions for access to water proposed by the authorities were not appropriate for indigenous people for various reasons, including the digging of wells on their lands or provision of pipelines, and they reported unsatisfactory consultation or ability to participate prior to the conception of projects, according to national and international law and standards. Some indigenous representatives reported that their communities felt neglected.

69. The information and cases received also highlight the fact that water sources used by many indigenous communities have been particularly affected by infrastructure, industrial, extractive, tourist or agricultural projects, especially regarding the availability and quality of water.

70. The Government must ensure equality of access for all communities without discrimination. The National Commission for the Development of Indigenous Peoples highlighted the existence of the Indigenous Infrastructure Programme to deal with shortcomings in remote communities and projects, which has provided them with drainage, clean water, electricity, shelter and other basic services. Over 21 billion pesos have been invested in infrastructure projects for indigenous peoples. Technical and infrastructure projects seek to implement sustainable options to provide water to communities with fewer than 15,000 inhabitants belonging to groups that are very or extremely marginalized. The rights of indigenous peoples are enshrined in the Constitution and federal and state legislation, including their rights to participate and to be consulted on federal programmes that directly affect the development of their peoples and communities.[6] Some states, including Mexico State, have strong legal provisions relating to indigenous rights to land and to the preferential beneficiaries in the exploitation of natural resources that must be agreed with the community.[7]

[6] Federal Planning Law, art. 20.

[7] Mexico State Law on Indigenous Peoples' Rights, art. 52.

51. While welcoming programmes for indigenous communities to improve their access to water and sanitation, the Special Rapporteur found that in practice, numerous challenges remain to be addressed, including measures to better support community-managed systems. The challenges for local authorities relating to water shortages and provision of services to remote and dispersed rural communities in many municipalities are evident. In the communities of Manzanillo I and II, in Chiapas State, the Special Rapporteur was shown infrastructure projects including water pumping and filtration systems to pump and clean water from a local lagoon to a tank located at the community school, and rainwater collection reservoirs that allow rainwater to be harvested and chlorinated for use by the community. With relatively high rainfall in the region, he was told that the reservoirs provided an additional water source for three or four months each year for the community of some 500 inhabitants. While the Special Rapporteur acknowledged the efforts to provide infrastructure to the community, the sustainability and maintenance of such rural water and sanitation systems must be improved.

52. Community members and civil society representatives supporting them informed the Special Rapporteur that the pumping system had ceased to function effectively after a short period of operation. The lagoon had dried up at one time, and the indigenous people stated that they feared that they had "angered the lagoon" by pumping water out of it. Community members requested piped water from an alternative source other than the lagoon. Since the reservoir functioned in rainy seasons only, the community quickly returned to taking water directly from the lagoon, collecting the muddy brown water in plastic containers to be carried to their homes by donkey. In those communities, the Special Rapporteur was concerned that the quality of the available water was clearly unacceptable and potentially a threat to the health of community members.

53. The community members noted that they had tried to raise their concerns with the authorities, but that they felt that there was discrimination against them as poor and indigenous peoples. The situation and challenges experienced by the communities was reportedly replicated in thousands of other similar communities in Chiapas State.

C. Women and girls

54. The mandate of the National Institute for Women includes examining ways to improve women's access to water and sanitation, such as through the gathering of data and statistics and improving women's participation in public policies and local decision-making. The representatives of the National Institute noted initiatives and programmes to empower rural women, promote equality in access to services including water and sanitation, and its efforts to ensure that gender perspectives were appropriately included in the National Development Plan. The National Programme for Equal Opportunities and Non-Discrimination against Women 2013-2018 is identified under goal 3 (strengthen water supply and access to drinking water, sanitation and sewerage services) of the National Water Plan 2014-2018 as a cross-cutting line of action. However, the Special Rapporteur expressed his concern that limited access to and availability of water and sanitation in Mexico has a disproportionately negative impact on women and girls. In that regard, he urges the Government to consider the recommendations contained in his report on gender equality in the realization of the human rights to water and sanitation (see A/HRC/33/49).

55. In locations with poor or no water and sanitation infrastructure, members of local communities have to collect and carry water to their homes from local springs or other water sources. Significant time is spent by households engaged in securing alternative sources of water such as bottled water and tanker deliveries. The National Institute stated that a survey conducted every five years had found that in 2014, some 10.5 million persons were engaged in carrying water for an average of 2.5 hours per week. In some locations, such as Filomeno Mata in Veracruz State, that is an almost full-time occupation for many family members, mostly women and girls. Some families reported that they must carry water themselves, often without vehicles, having to make a 30 to 40-minute trip to queue for water from roadside springs five or six times a day. In indigenous communities visited in Chiapas, the same issue was encountered, with women reporting that they spend a large part of their day collecting and transporting water. That limits their ability to engage in

other economic activities, and some of them also reported that it has a negative impact on their health.

D. Other vulnerable groups

56. The Special Rapporteur sought information regarding the provision of water and sanitation facilities for homeless persons, including in large urban centres such as Mexico City. While he was not able to ascertain the situation regarding government provision of services, he urges all relevant authorities to put in place measures to ensure that homeless persons have free access to safe drinking water, as well as to adequate toilets and bathing facilities. It was brought to his attention that some families faced financial challenges due to issues such as the forced disappearance of family members or internal displacement due to violence, which affects their capacity to pay for their water and sanitation services. Provisions are necessary to ensure that social tariffs are applicable in such cases.

V. Information, participation and accountability

57. In all communities that the Special Rapporteur visited he was told that information provision relating to water and sanitation services and meaningful consultation and participation in decision-making processes were generally inadequate and in many cases non-existent. Civil society representatives stated that the National Water Commission frequently refuses to provide information about water, allegedly referring to security concerns based on the National Water Law, and has no adequate participatory space for decision-making.

58. Non-governmental organizations indicated that there is a lack of transparency regarding the quality of water administered through public supply networks and in water sources, many of which are used directly without treatment. In zones hosting extractive industries (oil and shale gas extraction in Emiliano Zapata, Papantla, Veracruz State), contamination of water supply sources, owing to accidents or degraded supply networks, is apparently recurrent. Nevertheless, there is a lack of information from public authorities indicating to users that water quality may be compromised, when according to other evaluations that is evidently the case. That lack of information may constitute negligence on the part of the public authorities, or a deliberate attempt to avoid public awareness about the problem. Some community sources reported being unaware of shale gas extraction operations being conducted in their localities until they became aware of water contamination issues, noting that they had never been informed or consulted about such activities.

59. Mexico has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which would allow communications (complaints) to be submitted to the Committee on Economic, Social and Cultural Rights by or on behalf of individuals or groups of individuals who claim to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant. Officials noted that they were monitoring progress on the ratification of the Optional Protocol and also considering it in the context of the Government's other human rights priorities. The Special Rapporteur emphasizes that it is crucial that national legislation provides a clear guarantee to individuals and groups who are alleged victims of violation of their rights to water and sanitation, so that they are able to file complaints before a judicial body, request legal remedies and have those remedies enforced. He urges the Government to show leadership in ratifying the Optional Protocol without further delay as an important step to fulfil its international human rights commitments.

60. A considerable amount of information and cases reported to the Special Rapporteur indicate significant obstacles relating to access to justice on the rights to water and sanitation. Many individuals, especially those in vulnerable situations, do not have a clear understanding of their rights, proper legal advice, or resources to access judicial mechanisms. Furthermore, they do not trust the authorities, as so many cases of violations of the human rights to water and sanitation do not reach tribunals, and substantive

jurisprudence on those rights has been limited in comparison with other rights. Attention must be paid to strengthening responses in terms of follow-up to rulings and the provision of remedies in such cases.

61. While numerous community representatives noted that they had pursued complaints by addressing the relevant bodies, including the National Human Rights Commission, and some recommendations have been made relating to water and sanitation by human rights institutions, it was evident that such complaint processes are currently insufficient to achieve rapid and effective solutions for affected communities, if at all. The focus of human rights bodies and judicial mechanisms seems to be on civil and political human rights issues and it was evident that they are poorly equipped or reluctant to make judgments on economic and social rights, including the rights to water and sanitation. While some notable cases have been brought before the courts, progress must be improved on ensuring justiciability of such human rights in practice.

62. The Special Rapporteur is concerned that several community representatives, human rights defenders and civil society organizations informed him that they or others had experienced harassment, intimidation, threats or even arrest due to their complaints or protests relating to access to water and the contamination of water sources. They expressed the fear that they were being criminalized for exercising their right to protest, to defend their human rights and to openly express their concerns. The Special Rapporteur is alarmed by such reports and urges all relevant authorities to guarantee the rights of all individuals to raise their concerns and to freely express their opinions without fear of reprisals. Where complaints are brought to the authorities regarding any unlawful act against them, including unlawful arrest and detention, such cases should be fully investigated and the corresponding protection measures should be considered and implemented.

VI. Conclusions and recommendations

63. **The Special Rapporteur acknowledges the efforts of the Government of Mexico and the positive progress that has been made in the provision of water and sanitation services. The Government has made significant efforts to achieve adequate levels of water supply and sanitation, including by ensuring that infrastructure coverage is widespread in the country. Institutions are working hard to deliver services, and numerous officials and municipal and community-based actors demonstrated their dedication to operate and improve services to the best of their ability and resources, often in difficult circumstances. Mexico must be commended for revising its Constitution to incorporate the human rights to water and sanitation, which provides a valuable Constitutional foundation upon which to build. It is now time to fulfil the promise of the Constitution and transform those obligations into real enjoyment of those rights by all the Mexican population, overcoming several challenges the Special Rapporteur observed during his visit.**

64. **Despite the positive developments, budget allocation and investment in water and sanitation has been falling dramatically. It is essential to ensure that municipal service delivery to communities fully matches the national obligation and commitment to provide safe water and sanitation, which is not frequently the case currently. The primary obligation for the realization of all human rights, including the rights to water and sanitation, lies with the Government of Mexico, which is expected to use the maximum available resources to meet that end, with the highest priority given to service provision for domestic use. The Government must continue to strive to overcome the barriers to achieving universal access to the highest attainable standard of water and sanitation provision for all individuals.**

65. **The Special Rapporteur considers that the Government should give higher priority to the progressive realization of the rights to water and sanitation, as required under its international obligations as a State party to the International Covenant on Economic, Social and Cultural Rights. The adoption of a general law on water and *other appropriate legislative provisions, with proper participation and consultation* processes open to Mexican society, will be *an important and* necessary step to**

ensuring the rights to water and sanitation in practice, creating the legislative environment for concrete policies and programmes to be formulated and implemented, and allowing individuals and communities to claim their rights under domestic law. That would constitute an important and timely expression of the Government's commitment to progress in implementing the rights to water and sanitation. While some notable complaints and cases relating to water and sanitation and environmental concerns have been brought before the courts, progress is required to ensure the justiciability of economic and social rights, with decisions implemented in practice. The adoption of a new law would be beneficial in that regard.

66. The framework of the human rights to water and sanitation requires that the most basic needs for personal and domestic uses should be recognized and put first in all parts of the country. The poor and marginalized must be the highest priority. The consequence of not reaching everyone is that the poor and marginalized are left behind. Innovative solutions have been found or are under development and should be expanded, including through cooperation with other countries experiencing similar challenges. Necessary resources, technical capacity and monitoring and control of service provision must all be among the highest priorities at every level of governance to ensure delivery of the best possible water and sanitation services to all, including the poorest and those in dispersed rural communities that are difficult to reach with infrastructure networks. There must be recognition of the impact of economic and development activities on water and the potential and actual harm caused to local people who may have no choice other than to use contaminated water sources. Prompt action to address that situation is necessary.

67. Numerous other cases of concern from various regions in Mexico were brought to the attention of the Special Rapporteur by civil society organizations and community representatives during his visit. They demonstrate the extent of the challenges facing Mexico in the field of the human rights to water and sanitation and worrying patterns of violations across the country. While he cannot address all those issues in the present report, he will be studying further the information provided to consider any additional action that may be appropriate.

68. In that connection, the Special Rapporteur recommends that Mexico:

(a) Enact without undue delay and in full collaboration with all relevant stakeholders, taking into account their views and concerns, revised general legislation on water, giving full effect and meaning to the human rights to water and sanitation as established in international law and the Constitution of Mexico;

(b) Review the decentralized, three-tier water and sanitation management system with a view to strengthening state and federal support and funding to municipal level service providers who are currently struggling to meet their obligations under article 115 of the Constitution;

(c) Progressively realize the human rights to water and sanitation using the maximum available resources and guarantee funding and resources for water and sanitation at the levels required to fulfil legal, policy and programme commitments and to extend and improve water and sanitation service provision to poorly served or unserved regions or communities;

(d) Establish formal regulatory entities for both private and public providers that are empowered to ensure that providers comply fully with human rights and meet legal obligation and standards;

(e) Establish rapid intervention mechanisms requiring State or federal action to address situations in which water and sanitation systems are failing at the municipal level, including with regard to urgent technical support and assistance, emergency funding, ongoing support and training to ensure the delivery of the best possible services;

(f) Take all possible measures to ensure universal access to water and sanitation for marginalized populations living in the most vulnerable circumstances,

including indigenous peoples, rural populations, the homeless and those in poorly served peripheral urban areas;

(g) Urgently update the quality standard for drinking water in line with World Health Organization guidelines and recommendations for drinking water quality and provide more stringent and health-oriented surveillance and monitoring of drinking water quality;

(h) Ensure that social tariffs for services are applied to ensure the provision of affordable water and sanitation to all, including the poorest and most marginalized in society, and families whose circumstances leave them highly vulnerable, such as those affected by forced disappearance;

(i) Establish legal provisions prohibiting the disconnection of users who are economically unable to pay their bills for those services;

(j) Provide improved support and funds to community-managed water and sanitation systems from different levels of governments to ensure their expansion and effective operation;

(k) Enhance measures to ensure equal access to water and sanitation for women and girls, particularly in peripheral urban and dispersed rural locations, and to eliminate the impact that water collection and carrying and domestic water and sanitation roles have on women's ability to engage in work and on girls' access to education;

(l) Remove restrictions limiting or banning the delivery of water and sanitation services to illegal or informal settlements, with a view to enabling the inhabitants of those settlements to fully enjoy their rights to access those services without discrimination;

(m) Improve access to water, sanitation and hygiene in all educational establishments in both rural and urban areas by rapidly implementing policies to provide toilets and drinking water points, prioritizing states and communities with higher levels of poverty and marginalization. Furthermore, ensure that legal provision for water and sanitation in schools, health institutions, prisons and other public institutions is included in law;

(n) Take measures to ensure that water and sanitation services for indigenous peoples are accessible, affordable and acceptable to them and appropriate for their unique cultural traditions, beliefs and traditional community land and water management systems;

(o) Conduct urgent and independent investigations into the environmental and health impacts of development projects, industrial and commercial activities and the extensive use of pesticides, with a focus on contamination or overuse of water sources, particularly where such water sources are used to supply one or more communities. Moreover, systematic monitoring of the level of specific contaminants in piped water is an urgent issue;

(p) Improve and strengthen the implementation of the regulatory and policy framework on access to information, participation and prior, free and informed consultation to ensure that communities, including indigenous and dispersed rural communities, are properly informed, involved in planning, implementation and follow-up processes, and able to raise their concerns with the appropriate authorities and receive rapid responses and resolution of their problems;

(q) Strengthen access to remedies for violations of the rights to water and sanitation, including measures to prevent repetition, for all affected persons through judicial mechanisms and non-judicial grievance procedures that are accessible, transparent and accountable. In that regard, ensure that information on such mechanisms is readily available to all and where necessary, that legal or other assistance is provided;

(r) Ensure the rights of all individuals and groups to freely protest over issues relating to their rights to water and sanitation without fear of harassment or arrest, and guarantee their safety and protection in law and in practice;

(s) Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, allowing complaints to be submitted to the Committee on Economic, Social and Cultural Rights by or on behalf of individuals or groups of individuals under the jurisdiction of Mexico who claim to be victims of a violation of the human rights to water and sanitation.

69. **The Special Rapporteur recommends that the Governments of Mexico and neighbouring countries enhance existing cooperative relationships in the area of water and sanitation, including by sharing good practice and technical assistance.**